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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1028th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 November 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Ukrainian Soviet Socialist Republic

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the Ukrainian Soviet Socialist Republic (CCPR/C/58/Add.8)

1. At the invitation of the Chairman, Mr. Bourtchak, Mr. Koutchinski and Mr. Maimeskoul (Ukrainian SSR) took seats at the Committee table.

2. The CHAIRMAN welcomed the delegation of the Ukrainian Soviet Socialist Republic and invited it to introduce that country's third periodic report.

3. Mr. BOURTCHAK (Ukrainian SSR) said that there had been many changes in his country since it had submitted the third periodic report in January 1990. In March, the first multi-candidate elections to the Ukrainian Supreme Soviet had been held; the Supreme Soviet now consisted of representatives of many different groups. It engaged in genuine debate, and drew up and adopted its own legislation, rather than merely approving a prepared draft as its predecessors had done.

4. The Supreme Soviet had not yet passed many laws, because it still needed to learn about the process of democracy. Western parliamentary figures, including Mrs. Thatcher, the Prime Minister of the United Kingdom, had addressed the Ukrainian deputies and answered their questions.

5. On 16 July 1990, the Supreme Soviet had adopted the Declaration of State Sovereignty of the Ukrainian SSR, which did not yet have the force of law, but showed how the Supreme Soviet saw the future of the Republic. The Declaration conflicted with the legislation of the USSR in certain areas and had been the subject of considerable debate in the Supreme Soviet. Some deputies had wanted the Declaration to have the force of constitutional law immediately, but others had pointed out that such a step would give it the same authority as the Constitution of the Ukrainian SSR, with which it conflicted in several important respects. After considerable debate both within the Supreme Soviet and among the general public, culminating in a hunger strike by Ukrainian students, the Supreme Soviet had appointed a commission to draw up a new Constitution. A new law which had just been passed abolished the monopoly previously exercised by the Ukrainian Communist Party over all areas of public life.

6. Some progress had been made in the difficult area of economic development. The Procurator of the Ukrainian SSR was now appointed by the Supreme Soviet, rather than by the Procurator of the USSR. All government bodies had been depoliticized, so that it was no longer necessary to be a member of a particular political party in order to work for the Procurator's Office, the judiciary, the police, and other bodies concerned with internal affairs and national security.

7. When the all-Union Constitutional Review Committee had been set up, many of the Soviet Republics had feared that the Committee would try to change republican legislation in order to bring it into line with the existing USSR Constitution. Some of them, including the Ukrainian SSR, had accordingly

decided that decisions of the Constitutional Review Committee affecting republican legislation should not take effect until a new USSR Constitution had been adopted.

8. There had been considerable debate within the Ukrainian Supreme Soviet about the future role of the Ukrainian SSR within the USSR. The orthodox view, still taken by some deputies, was that the Ukrainian SSR was part of the USSR and must, therefore, give all-Union legislation precedence over its own legislation. Other deputies felt that the Ukrainian SSR must confirm its own sovereignty and draw up its new Constitution before deciding on its relationship with the central Soviet Government and the other Union Republics. The third and most radical view, held by the recently-founded Republican Party and other Ukrainian nationalists, was that the Ukrainian SSR should not be bound by any agreement with the central Government of the USSR, but should make its own agreements directly with the other Union Republics.

9. There were a number of difficult legal problems to be overcome in that area. Under the current law, the central Government of the USSR had authority over the Governments of the Union Republics although, in practice, the latter were adopting and implementing laws which directly contradicted central legislation. There were, however, cases where all-Union legislation was more progressive than republican legislation: for instance, a new all-Union law on religious association in the USSR allowed religious organizations to carry out activities, such as charitable work and religious education, which had previously been forbidden. The law had, therefore, been implemented in the Ukrainian SSR, because it was more progressive than the existing republican legislation.

10. No one denied the crucial role of human rights in State and public life, but there were disagreements about the way in which human rights could be guaranteed. One major problem was the psychological barrier created by the old doctrine of State paternalism, which had encouraged people to believe that human rights must come second to the interests of the State. The principle that any action was permissible unless it was specifically prohibited by law was gradually becoming established, but it was still essential to ensure that the law was equitable and based on sound legal principles.

11. The Ukrainian SSR was trying to create the machinery which would resolve the many problems which had arisen. It had been the first Republic to establish a committee of People's Deputies to study proposed new legislation and ensure that it was consistent with human rights. Many citizens had already contacted the committee with their complaints. Another committee had been set up to safeguard the rights of people who had suffered in the Chernobyl nuclear disaster.

12. The Ukrainian SSR made great efforts to publicize human rights issues. There were special training courses for workers in areas where human rights were important, for instance for law enforcement and prison officers, who needed to know about the human rights of detainees and convicted persons. There were also courses in the Republic's universities, and other attempts were made to increase public awareness of human rights. For instance, a human rights seminar in Kiev in October 1990, which had brought together representatives of 29 countries, had been widely publicized in the Ukrainian press. It was hoped that such measures would help to overcome the psychological barrier he had mentioned.

READEX FICHE

13. Many draft laws were awaiting consideration by the Supreme Soviet; he could provide the full list if members were interested. The bills which were most relevant to the field of human rights related to amendments to the Constitution, the reduction of the influence of the Communist Party in State and public life, greater economic independence for the Republic, consumer rights, citizenship, and public organizations. The latter bill gave republican law precedence over central Soviet law in certain circumstances. Other bills concerned protection against radioactivity and compensation for the victims of the Chernobyl disaster, the status of the emergency zones proclaimed after that disaster, popular referendums (bill drawn up in response to the student hunger strike), the independence of the judiciary, the regulation of the activities of Ukrainian courts, and the rights of national minorities (ethnic Russians and other minority groups made up 20 per cent of the Republic's population).

14. Another of the bills before the Supreme Soviet concerned a citizen's right to complain directly to the courts about unlawful acts committed by officials. The existing Constitution had been widely criticized, but it did contain an extensive inventory of human rights. However, it was a purely declarative instrument, which proclaimed rights but contained no machinery for guaranteeing their implementation. For instance, it proclaimed the right of peaceful assembly, but it was common knowledge that demonstrations against the Soviet presence in Afghanistan had been suppressed. Political meetings, rallies and demonstrations were now held freely; there had been demonstrations almost every day during the Supreme Soviet's first session, and they had certainly influenced the deputies' decisions.

15. The earlier law on complaints about unlawful actions by officials had been widely criticized because citizens had been obliged to go through an administrative tribunal before they could address their complaints to the courts. The law had been changed, but it was still criticized because it allowed a citizen to complain directly to the courts in the case of an unlawful action by an individual official, but not an action by a collegiate body. The law was now due to be amended again.

16. On the question of the Ukrainian SSR's obligations under the Covenant and other international instruments, the view had in the past been taken that international instruments could not have direct effect in the Ukrainian SSR, but must be enacted by means of internal legislation. However, the Constitutional Review Committee had referred directly to international instruments in the eight conclusions it had adopted so far. For instance, under the existing law, a person who had confessed to a minor offence could be convicted without a trial; that practice had now been declared contrary to the principle of presumption of innocence, enshrined in the Covenant and the Universal Declaration of Human Rights.

17. One area which had been the cause of considerable debate in recent months was the internal passport (propiska), which was often used to prevent people moving to the major cities. The system was an unacceptable infringement of the right to freedom of movement, but it was also used in the allocation of housing and other important procedures, so it could not simply be abolished. A commission had been set up to investigate ways of removing the restrictions on freedom of movement without causing insuperable problems elsewhere.

18. One of the most recent decisions of the Supreme Soviet had been taken on 27 October 1990, when it had established a Constitutional Court which would, among other things, consider complaints from individuals about violations of their constitutional rights. The many changes which had taken place in the Ukrainian SSR had been far from straightforward, and the new reforms had not yet been fully implemented, but the Republic was progressing slowly towards greater democracy. He would be glad to provide any further information which the Committee required.

19. The CHAIRMAN thanked Mr. Bourtchak for his comprehensive introduction outlining current developments in the Ukrainian SSR and invited the Ukrainian delegation to reply to the questions raised in the list of issues to be taken up in connection with the Republic's third periodic report.

I. Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3))

"(a) Please comment on the legal effect of the Ukrainian Declaration of State Sovereignty of 16 July 1990, particularly in terms of its relationship to the existing Constitution of the Ukrainian SSR and the Constitution of the USSR.

(b) To what extent have the provisions of the Covenant been enacted into domestic law? What measures are contemplated to ensure consistency between the Covenant and new constitutional or other legal instruments?

(c) Please provide additional information how the USSR Act of 30 June 1987, as supplemented by section 31-A of the Code of Civil Procedure of the Ukrainian SSR, has been actually implemented (see para. 19 of the report)."

20. Mr. BOURTCHAK, replying to question (a), said that the Ukrainian Declaration of State Sovereignty determined the activity not only of the Supreme Soviet itself, but also of the commissions that prepared legislative acts. In recognizing the paramountcy of the international instruments to which the Republic had acceded, the Declaration provided that priority should be given to the Republic's international treaty obligations. Through the inclusion of that provision in the Constitution, those obligations would become part of domestic legislation. He drew attention to the last paragraph of section X of the Declaration, which read as follows: "The Declaration shall be the basis for a new Constitution and for the laws of Ukraine, and shall define positions of the Republic when concluding international agreements. The principles of the Declaration of Sovereignty of Ukraine should be employed in concluding a Union Treaty".

21. Certain provisions of the Constitution of the USSR were currently under justified criticism, particularly the provision which granted the Union the authority to settle issues affecting the interests of the Republics, thereby usurping powers which should rightly fall to the Republics themselves. That provision would no doubt have to be deleted. The respective legislative systems of the USSR and of the Republics provided for joint competence on many issues; that meant that certain issues could be settled by either the USSR or the Republics, thus leaving further room for usurpation. It had therefore recently been decided by the Supreme Soviet of the USSR that the powers entrusted by the Republics to the USSR must be more clearly defined.

22. There were a number of discrepancies between the respective legislations and Constitutions of the Republics and the USSR. While the Declaration could not be considered tantamount to legislation, provisions had been introduced into the Ukrainian Constitution which did not yet exist in the Constitution of the USSR. In some respects, therefore, the legislation of the Republics was actually ahead of that of the USSR. Those discrepancies were currently the subject of negotiations aimed at finding mutually acceptable solutions.

23. In answer to question (b), he explained that the text of the amended Constitution already provided that international treaty obligations, including those stemming from the Covenant, would form part of domestic legislation since the Constitution itself would proclaim those obligations. While those provisions would not be self-implementing, the Constitution would require the Supreme Soviet and other bodies to create machinery for their implementation.

24. In response to question (c) he said that section 31-A of the Code of Civil Procedure of the Ukrainian SSR did not supplement Union legislation governing the consideration of complaints by citizens about arbitrary action by officials, but simply reproduced the relevant provisions contained in Union legislation. Under that new fundamental provision, citizens could complain not only against actions of individual officials, but also against those of collegiate bodies.

25. The CHAIRMAN thanked the representative of the Ukrainian SSR for his helpful replies and invited Committee members to put questions to the delegation.

26. Mr. POCAR, observing that the previous periodic report of the Ukrainian SSR had been presented in a spirit of great co-operation, expressed confidence that the current dialogue would prove highly satisfactory. The Republic had made considerable strides towards democratization, but further progress needed to be made in many areas.

27. In relation to the dissemination of human rights principles, he asked whether the public had been informed about the presentation to the Committee of the Republic's third periodic report and whether the questions discussed before the Committee would merely be brought to the attention of the Ukrainian Government or actually be debated in Parliament or elsewhere. He welcomed the 1987 legislation enabling citizens to defend themselves against arbitrary action by officials; that legislation was in line with article 2 (3) of the Covenant. He would like to know the position of the Ukrainian Government on accession to the Optional Protocol.

28. Mr. ANDO expressed his deep satisfaction at the democratic changes that had taken place in the Republic since the presentation of its previous periodic report. In connection with paragraph 10 of the report, which concerned the recognition by the Ukrainian SSR of the compulsory jurisdiction of the International Court of Justice with respect to six international treaties, he asked whether, in the event that the interpretation of one of the treaties by its own monitoring body or by a State party should differ from the interpretation given by the Republic, the matter would be referred to the International Court of Justice. He would also welcome an explanation as to why the Covenant was not included among the six treaties.

29. Lastly, he asked whether section X of the Ukrainian Declaration of State Sovereignty, which provided that the Republic should recognize the precedence of universal human values over class values, and the priority of the generally recognized norms of international law over the norms of national law, gave rise to any change in the status of international law with respect to domestic legislation.

30. Mr. EL-SHAFEI thanked Mr. Bourtchak for his clear introduction. As other Committee members had stated, the Ukrainian SSR was going through an important period in its national history. He would welcome further clarification of the status of the Covenant in the Republic's draft Constitution. In that respect, it was important to know whether the USSR Constitution would continue to have precedence over the Ukrainian Constitution and over domestic law once the amended Constitution came into force. In relation to Mr. Bourtchak's statement that the Covenant would be incorporated into the amended Constitution, he requested further details on how the Covenant's provisions would be implemented. Would the Supreme Soviet enact legislation based on those provisions or would they merely be taken into consideration by the Constitution? Would special bodies be established to deal with human rights issues in the Republic? What would be the status of non-governmental organizations? He would also welcome further clarification of any changes effected by the amended Constitution in the relationship between the Republic and the Union.

31. Mr. FODOR said that he had been particularly interested to hear of recent developments in the Ukrainian SSR and observed that considerable progress had been made towards democratization. He commended the delegation for its comprehensive and objective report, but regretted that nothing had been said about the difficulties experienced in implementing the provisions of the Covenant during the current transitional period.

32. Regarding the recognition by the Ukrainian SSR of the jurisdiction of the International Court of Justice with respect to six international treaties, he stressed the importance of that decision in so far as it implied a significant change in the approach to third-party settlements, and inquired whether that recognition would be broadened in the near future to encompass other international treaties. He also inquired whether that change in approach had any practical implications in terms of the Republic's accession to the Optional Protocol.

33. In connection with article 5 of the Constitution, which provided that major matters of State should be submitted for nation-wide discussion and put to a popular referendum, he asked whether there was any specific legislation governing the referendum procedure and, in particular, what were the requirements for initiating a referendum.

34. He was grateful for the information provided by the Ukrainian delegation on the new legislation enabling citizens to defend themselves against arbitrary action by officials, but would welcome more information on how that legislation was applied in practice, particularly whether the plaintiff could appeal directly to a court or whether he must first exhaust all administrative remedies.

35. Mr. MYULLERSON said that he was possibly the only member of the Committee to have visited Kiev recently, on the occasion of the regional human rights seminar organized by the United Nations Centre for Human Rights, and to have witnessed at first hand the changes which had taken place in the Republic, and particularly the intense political activity in Kiev during the seminar.

36. An entire set of new laws, which had been only bills a year previously, were now in force, including the law on freedom of association, the law on freedom of the press, and the law on freedom of conscience and religion, none of which could have been included in the report as it had been submitted almost 12 months previously. However, the delegation in its introduction had supplemented the report in good measure.

37. It was disappointing that no mention had been made of the difficulties encountered in implementing those new laws and little or no statistical information or information on current practice had been included. He expressed the hope that the delegation would enlarge on those points in the course of its replies. The expressions "socialist democracy" and "socialist law and order", which had been used in the report, had in the past had certain class connotations. He wondered therefore what meaning was attached by the Ukrainian people and Government to those concepts today and how those systems differed from ordinary democracy and law and order.

38. In addition to the clarification sought by Mr. Pocar and Mr. Fodor concerning the Optional Protocol, he wished to know whether any practical steps had been taken for the accession of the Ukrainian SSR to the Optional Protocol or whether such accession was in any way linked to accession by the USSR. Could the Ukrainian SSR accede on its own, before the USSR, and set an example to the Union and other Republics?

39. On the subject of Union legislation, and notably on the law of association already in force, he noted that an implementation decree by the Ukrainian Supreme Soviet had been adopted and wondered whether that related to the implementation of the law itself or its entry into force and what the thrust and meaning of that law were? Could not the Union law be applied directly? In the USSR, one legislative shortcoming was that neither the Constitution nor the laws could be applied without a special order or instruction from a ministry or higher body to enable officials of the Ministry of Internal Affairs to implement the law. Could Ukrainian bodies apply the laws and Constitution directly or did they also require special instructions in that regard?

40. Mrs. HIGGINS said that she had had the pleasure of hearing the head of the Ukrainian delegation defend his country's second periodic report at the beginning of the end of the old era and was delighted to see him defend the third report at the beginning of the new era. The delegation's dialogue with the Committee would undoubtedly be extremely useful. The introductory remarks had been much appreciated both for the informal style in which they had been delivered and for their very substantive content, in particular the emphasis on the need for national law always to be tested against human rights law.

41. Turning to paragraph 10 of the report and the question of the acceptance of the compulsory jurisdiction of the International Court with regard to six treaties, she noted that in certain instruments where there was no monitoring machinery, and more importantly no in-built provision for State-to-State

litigation, especially in a new era where third-party dispute settlement was becoming acceptable, recognition of the jurisdiction of the International Court was extremely useful. However, since some of the listed instruments contained their own State-to-State dispute settlement procedure, she wondered how the Committee should understand the acceptance of the jurisdiction of the International Court and what the implications were for the procedures already in existence under those instruments. She would also like to know why a distinction was being made between the various types of treaties.

42. Mr. WENNERGREN considered that the third periodic report had been well prepared for the purposes of the present dialogue, which had got off to a good start with the introductory statement.

43. Referring to the Human Rights Commission of the Ukrainian Supreme Soviet, he asked whether the third periodic report had been submitted to that Commission for comment and whether it had been given an opportunity to make any contribution to the report. He also inquired whether the summary records of the Committee's meetings would subsequently be made available to the Commission for comment and proposals on future legislation. With regard to the observation that citizens could file complaints with the Commission regarding deficiencies in legislation or unlawful treatment, he would like to know what the relationship was between the Commission and the Procurator and whether there was any co-ordination between the two.

44. Mr. AGUILAR URBINA said that the report would have been more satisfactory had it covered the difficulties encountered in implementing the new human rights legislation. The introductory statement had been most enlightening and had cleared up many doubts. It was exciting to witness the great changes taking place, which were doubtless of benefit to Ukrainian citizens, but at the same time it was strange to see old groups reappear and express themselves freely in Kiev. The celebration of the one thousandth anniversary of the introduction of Christianity into Russia, which had recently been celebrated in the Ukrainian SSR, was also an important sign of the burgeoning of democracy.

45. Previous speakers had already raised the questions he had had in mind. However, he was particularly anxious to know what measures had been taken in the Ukrainian SSR to accede to the Optional Protocol, and whether it intended to wait for the Soviet Union to accede first or set an example to the other Republics by acceding alone.

46. He also wondered how the Human Rights Commission operated under the new Code of Civil Procedure, which enabled an individual to complain about human rights violations. Lastly, referring to section X of the Declaration of State Sovereignty, he asked whether there was any possibility that the Covenant would be generally recognized as a norm of international law and given priority over the norms of national law and whether individuals in the Republic could invoke the Covenant in accordance with the new Code of Civil Procedure.

47. Mr. NDIAYE congratulated the Ukrainian delegation on its report, which was in keeping with the Committee's guidelines. Particularly with reference to paragraph 10 of the report, he was surprised that a State declaration had been made in the way described; conventions would not normally be listed. It was all the more surprising since almost all the instruments listed had their own machinery for settlement of disputes. He therefore wondered whether that

declaration showed a procedural gap of some kind, whether, on signing the various instruments, the Ukrainian SSR had entered reservations, or whether the initiative had been taken out of a wish to implement human rights provisions.

48. Article 3 of the Ukrainian Constitution made reference to the principle of democratic centralism, which had given rise to a great deal of abuse and had often been confused with bureaucratic centralism. He therefore wondered whether the people who in the past had had decision-making power in theory now wielded it in practice.

49. With reference to article 6 of the Constitution, he asked whether the role of the Communist Party remained as it always had been or whether there had been some decentralization, and whether it could exist alongside other political groups. Furthermore, in view of the number of well-supported movements in Communist countries which were now questioning the state of affairs there, he inquired what was happening in the Ukrainian SSR in that regard and what were the prospects for the future.

50. Mr. WAKO expressed appreciation for the excellent report of the Ukrainian SSR, which fully conformed to the Committee's general guidelines. The additional information provided in the introductory statement had also been most welcome.

51. Most of the points he had wanted to make had already been raised by previous speakers and in that connection he associated himself with Mr. Ndiaye and Mr. Myullerson, and particularly their questions on democratic centralism, socialist democracy, and socialist law and order. He also associated himself with the questions raised in connection with paragraph 10 of the report. The last sentence of paragraph 11 might also apply to the Covenant and gave the impresssion that the Ukrainian SSR might have no difficulty in acceding to the first Optional Protocol. He, too, would like to know when such accession might be expected. Was it under active consideration?

52. He associated himself with Mr. Wennergren's comments about the Human Rights Commission. He would also like to hear more about the Constitutional Court and how it would relate to the Supreme Court with respect to allegations of human rights violations.

53. There were many references in the existing Ukrainian Constitution to provisions of the Constitution of the USSR, with which it must be in conformity. Article 4, for example, obliged all State and public organizations and officials to comply with the Constitution of the USSR; article 6 required Party institutions to function within that Constitution; and article 57 required that citizens should comply with it. He asked what arrangements were to be made during the transitional period before the Declaration of State Sovereignty came into force.

54. He wished to know how the right of the Ukrainian SSR to secede from the USSR, provided for in article 69 of the existing Constitution, could be exercised at the present stage. The Ukrainian representative had described three different views on the place of the Ukrainian SSR in the Soviet Union. The third view, that there should be no Union agreement but agreements with other Republics directly pending the entry into force of the new Constitution, appeared to amount more or less to secession from the Soviet Union, while the

second view could be considered a secession coupled with new arrangements following such secession. He would therefore be interested to know what the current procedures were and whether it was proposed to use them in order to give effect to article 69.

The meeting was suspended at 12.20 p.m. and resumed at 12.40 p.m.

55. Mr. BOURTCHAK (Ukrainian SSR) noted that Mr. Pocar had asked how the third periodic report had been prepared, whether the public had been involved in its preparation, and how the results of the Committee's consideration of the report would be publicized and brought to the attention of the Supreme Soviet. The report had been prepared in consultation with the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Procurator's Office and educational institutions such as the Academy of Sciences; it represented their consolidated views. Before its submission, it had been referred to the Human Rights Commission of the Supreme Soviet, but that body's views had unfortunately not been received before the delegation's departure.

56. All the views expressed by the Committee during its consideration of the second periodic report had been brought to the attention of the Government and the general public, but possibly to a lesser extent than might have been desired. Steps were now being taken to do more in that direction. A note on the subject had been distributed to persons responsible for implementing the Covenant, and it was intended to increase its circulation. The result of the Committee's consideration would be reported to the Human Rights Commission and to the public, thus encouraging further attention to human rights issues and the provision of more detailed information to officials and public servants concerning their obligations under the Covenant.

57. On paragraph 10 of the report, it had been asked why the Ukrainian SSR had recognized the compulsory jurisdiction of the International Court of Justice with respect to only six treaties, and what its position was vis-à-vis the Optional Protocol. In ratifying the various instruments, the Government and the Supreme Soviet had entered a reservation to the effect that it did not recognize the jurisdiction of the International Court with respect to them. The new approach to the implementation and exercise of human rights, with greater participation of the public and more openness of public organizations to criticism, had led to a decision in April 1989 to remove that reservation; hence the reference to recognition of the compulsory jurisdiction of the International Court with respect to the six treaties mentioned. That was a first step towards more complete implementation by the Ukrainian SSR of its commitments with regard to international monitoring.

58. A number of members had referred to his country's intentions with respect to accession to the Optional Protocol. The intention to accede certainly existed but its fulfilment would require the agreement of all government and legislative bodies, which it was hoped would be forthcoming in the near future.

59. Mr. Ando had asked about the relationship between the Declaration on State Sovereignty and the Constitution. The Declaration was not a law, but represented the Republic's intention to conduct its own State, economic and political life on the basis of specific principles; it was to be incorporated in the Constitution of the Republic. On the question of the Constitution of the USSR, since the Ukrainian SSR and the other Republics at present formed

part of the USSR, the agreement of Union bodies would be necessary for the application of any solutions to problems. It had been asked how the Ukrainian SSR could exercise its right to secede from the USSR, and Mr. Wako had referred in that connection to article 69 of the Constitution. That was a question affecting the entire people of the Republic, which could not be settled by a particular group of individuals alone. The law on the procedures for such secession had been adopted on 3 April 1990, and on its entry into force an order of the USSR Supreme Soviet had been promulgated providing for the holding of referendums in the Republics. There had been some criticism of the length of time that must elapse between the holding of such referendums and consequent action. That was a question affecting the nation's right to self-determination, and an unequivocal decision had to be taken on the basis of the referendum. As a result of a student hunger strike, a month's deadline had been set for the preparation of the relevant bill. Under article 104 of the existing Constitution, bills were put to a referendum as a result of a Supreme Court decision. If a question arose as to the application of article 69 of the Constitution, there would not only be a call for a referendum, but a great deal of publicity would have to be given to it, affecting as it did the fate of the entire people. It was a question that could not be dealt with overnight.

60. As to Mr. El-Shafei's question about the relationship between the Constitution of the Republic and the Constitution of the USSR, his personal view was that if primacy was recognized for international law over national law, and a Union agreement had been concluded in which the Republic had assigned part of its competence to Union bodies, within those limits the competence and jurisdiction of the Union bodies would have precedence. There were also important emotional factors to be considered, as in the case of the failure by Union organs to take account of the interests of the Republic with regard to the construction of nuclear plant.

61. Parliament was obliged to take various issues into account, such as the need to ratify Union laws in the context of republican legislation. If a Republic in a Union of 15 Republics had the power of veto, that would lead to an impossible situation. Sober consideration of problems was required in order to solve them in the interests of the Ukrainian people, and all the pros and cons had to be carefully weighed.

62. The future Constitution would contain a norm recognizing priority for all internationally-recognized principles and provisions, including the provisions of international agreements concluded by the USSR. The Declaration of State Sovereignty interpreted that issue in a narrower sense; the Constitution would provide that international legal commitments would be mandatorily applicable to the territory of the Republic. It would be possible to make direct reference to them in solving specific questions. They would not be directly incorporated into domestic legislation, but it would be possible to refer in the courts to international treaties or agreements as having priority over a republican Act. A provision on the subject already existed in many codes, including the Civil Code, the Code of Civil Procedure and the Marriage Code. The Civil Code, for example, provided that if an international treaty established rules that differed from those in Soviet civil legislation, the rules of the treaty would apply. The provision was based on the premise that the Ukrainian SSR was within the Union and if the latter had entered into an international agreement that was in conflict with the Ukrainian Civil Code,

the Republic must be guided by the international principle. That could not apply, however, to provisions of the Criminal Code, under which penalties for narcotics offences, for example, depended directly on the Republic's laws.

63. Mr. El-Shafei had asked whether a special body would be established by the Ukrainian Human Rights Commission to deal with specific issues. The Commission was only just beginning its work, but it was intended that a law defining the procedures and activities of all permanent commissions would be enacted. His department in the Supreme Court engaged in work on the Legislation and Law-Enforcement Commissions. It had recently been suggested that the Human Rights Commission might work in co-operation with the Legislation Commission to facilitate an assessment of the conformity of existing legislation with international instruments.

64. In reply to Mr. Wennergren's question concerning complaint procedures and the Procurator's Office, he said that the Procurator considered complaints of breaches of specific laws by government bodies but could not consider a complaint that a particular law might not be in keeping with the Covenant. The Supreme Soviet had for some time had a section on complaints and communications, staffed by civil servants who prepared the relevant briefs, and over 100,000 complaints had been dealt with. Under the new structure, there was an auxiliary body composed of deputies from the Supreme Soviet which considered complaints relating to the activities of the various State organs. The fact that the Supreme Soviet had taken direct responsibility for monitoring the protection of the citizens' rights was a positive factor, and it was expected that the necessary machinery would be set up.

65. In response to Mr. Wennergren's question, he said that the Committee's records would be submitted to the Human Rights Commission. As to the questions raised by Mr. Myullerson and Mr. Ndiaye, the Supreme Soviet had amended articles 6 and 7 of the Constitution. There was a multi-party system in the Republic in which the Communist Party expressed its views in Parliament on a pluralistic basis. There could be no question of its issuing directives to Parliament. The concepts of socialist democracy and socialist centralism were characteristic of the class approach that had long been followed in his country. The new thinking was based on the view that ordinary human values took precedence over class and Party values. In the new Constitution, the problems of legality and democracy would be applied without qualifying them with the term "socialist". Legality was not a panacea, since the law itself might be unjust. A State subject to the rule of law could not be created overnight. Human beings should be placed above all other considerations and human rights should be exercised without encroachment of the rights of others. That principle should have overriding priority. A type of legal order under which there could be no criticism of State structures could not be considered just, and such ideas must be rejected.

The meeting rose at 1.10 p.m.

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Fortieth session

SUMMARY RECORD OF THE 1029th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 November 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIC
later: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Ukrainian Soviet Socialist Republic (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the Ukrainian Soviet Socialist Republic (CCPR/C/58/Add.8; M/CCPR/90/42)

1. The CHAIRMAN invited the delegation of the Ukrainian Soviet Socialist Republic to reply to the questions the members of the Committee had asked on section I of the list contained in document M/CCPR/90/42.

2. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), replying to Mr. Fodor's question on the remedies available in the courts against unlawful action of officials infringing citizens' rights, said that the procedure followed in such cases was laid down in the Code of Civil Procedure of the Ukrainian SSR, section 31-A of which had recently been updated. Any citizen who considered that his rights had been violated by an official or a representative of Government authority could thus lodge a complaint before the courts, which then informed the person accused of the offence. If, after due consideration, the courts decided that the official in question had exceeded his powers and unlawfully deprived the complainant of the rights to which he was entitled under the Constitution, they handed down a ruling to that effect. The procedure followed before the courts was therefore in line with the administrative appeal procedure which had always been available to citizens for the defence of their interests. The Code of Civil Procedure of the Ukrainian SSR had merely been supplemented by section 31-A, which dealt with complaints against unlawful actions of officials infringing citizens' rights.

3. Replying to Mr. Myullerson's question whether the Ukrainian SSR was likely to accede to the Optional Protocol to the Covenant, he said that the Ukrainian SSR was acting as an independent State in that regard and that it would probably ratify the Optional Protocol without necessarily waiting for a decision by the Soviet Union on the matter.

4. In reply to Mr. Wako's questions, he said that the Supreme Court of the Republic was responsible for hearing individual cases of violations of citizens' rights, while the Constitutional Court was empowered only to rule on the constitutionality of the laws themselves. The Supreme Court was bound to apply the law, whereas the Constitutional Court could give a ruling on the law's conformity with the Constitution or the Covenant.

5. Mr. Wako had also noted that the report of the Ukrainian SSR contained many references to the Constitution of the USSR. In that connection, he said that, under the current organizational structure of State authority, the Soviet Constitution was still the supreme legal text which applied when there were gaps in the legislation of the Republics.

6. Mr. KOUTCHINSKI (Ukrainian Soviet Socialist Republic), replying to the questions concerning the ratification of the Optional Protocol, said that a great deal of work had been done along those lines and that the Ukrainian Minister of Internal Affairs was responsible for co-ordinating discussions with the relevant State bodies, legislative authorities and representatives of social organizations. It seemed that, on the whole, public opinion was in

favour of the Republic's accession to the Protocol. Even if measures were not taken in the very near future, everything seemed to indicate that the Ukrainian SSR would ratify the Protocol before the Soviet Union.

7. The CHAIRMAN invited the delegation of the Ukrainian SSR to reply to the questions contained in section II of the list, which read:

"II. Self-determination (article 1)

With reference to paragraph 15 of the report, please clarify whether the validity of any enactments of the USSR Council of Ministers or of USSR Ministries has been actually suspended by the Supreme Soviet of the Ukrainian SSR. What will be the impact in this regard of the Declaration of State Sovereignty of the Ukraine?"

8. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the adoption of the Declaration was one of the clearest indications of the Ukrainian nation's strong desire that its right to self-determination should be respected. Even before the adoption of the Declaration, it had been possible for the Supreme Soviet of the Ukrainian SSR to repeal legislation which had been adopted by the USSR Council of Ministers and was not in conformity with Ukrainian legislation. It was difficult to give specific examples of decisions taken by the Supreme Soviet so far because it had been in existence for only three months and had a full programme of work ahead of it. Under the Constitution in force, however, Ukrainian legislation had to be consistent with that of the USSR, although it took precedence if there was any conflict.

9. The CHAIRMAN invited the delegation of the Ukrainian SSR to reply to the questions contained in section III of the list, which read:

"III. Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26)

Please clarify the extent to which the principle of equality of rights and equality before the law contained in article 32 of the Constitution of the Ukrainian SSR is applicable to aliens."

10. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that, under the law, there was no discrimination based on sex and that the Supreme Soviet had even recently voted in favour of reviewing the legislation in order to improve the status of women. In practice, however, there were still substantial inequalities. The vast majority of responsible jobs were held by men, the number of women in Parliament continued to go down, women sometimes worked twice as much as men and, owing to their financial and family responsibilities, it was practically impossible for them to take part on an equal footing with men in the conduct of public affairs. The resulting problems in that regard remained extremely difficult to overcome.

11. Aliens had the same rights under the Constitution as citizens of the Ukraine. The only restrictions imposed on them were political, since they were not permitted to participate in any decision-making bodies, belong to political parties, serve in the army or hold military appointments.

12. Mr. FODOR said that political opinion was not one of the grounds for discrimination referred to in article 32 of the Constitution. Although the Ukrainian delegation had emphasized during the consideration of the second periodic report that the list of grounds contained in article 32 of the Constitution was not exhaustive, the fact remained that there was a contradiction with article 2 of the Covenant. Previously, when the Communist Party had officially played a predominant role, there had clearly been discrimination based on political opinion, but the current situation was different and the provisions of the Constitution governing the role of the Communist Party had been changed. He wondered whether, as a result, the provisions relating to grounds for discrimination had also been changed.

13. He noted that great efforts had been made in the Ukrainian SSR to encourage women to take part in economic life, while protecting the rights of women with children. Referring to paragraphs 25 and 26 of the report, he asked whether a man who had sole responsibility for a child of less than one and a half or two years enjoyed the same rights and advantages as a woman in the same situation.

14. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), replying to Mr. Fodor's first question, said that the Constitution was being revised and that, under the new text, membership of any party would no longer be a ground for discrimination based on political opinion. As to the second question, men who had sole charge of their children must naturally have the same rights as women in the same situation. Legislation to that effect had specifically been adopted in 1987 by the Supreme Soviet of the Soviet Union, guaranteeing men's rights in that situation.

15. The CHAIRMAN invited the delegation of the Ukrainian SSR to reply to the questions contained in section IV of the list, which read:

"IV. Right to life (article 6)

(a) How often and for what crimes has the death penalty been imposed and carried out since the consideration of the second periodic report of the Ukrainian SSR?

(b) What measures have been taken to protect the right to life against the risk of nuclear disaster and environmental pollution, particularly subsequent to the accident at Chernobyl?

(c) Has any consideration been given in the Ukrainian SSR to the abolition of the death penalty?

(d) Have there been any prosecutions, and if so with what results, under articles 108 (2) and 123 (2) of the Criminal Code of the Ukrainian SSR? (See paragraph 32 of the report)."

16. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), replying to question (a), said that he was unfortunately unable to give precise figures, since the statistics on that subject were still kept secret. He was, however, able to confirm that the number of death sentences imposed and carried out had gone down by one third and that such sentences had always been imposed in cases of murder.

17. With regard to question (b), he said that, immediately after the accident at Chernobyl, a high-risk area with a radius of 300 kilometres had been designated and that all the inhabitants of the area had been moved into new housing built for them. It had subsequently turned out that the affected area had a much bigger radius than 300 kilometres and the second stage had therefore been to extend the high-risk area, with those affected being duly compensated. Data on crop irradiation had then been published, in-depth studies on how to deal with the after-effects of the disaster had been carried out in the Supreme Soviet of the Ukraine and a special commission had been set up to take action against persons who had refused to divulge essential information on the effects of the accident. The provisions relating to the protection of the right to life were being scrupulously respected. A decree concerning liability in cases of non-compliance with instructions relating to environmental protection had been adopted and other legislative texts relating to the prevention of pollution and the protection of citizens who had suffered losses in the disaster were currently under consideration. A moratorium on the construction of new nuclear plants and power stations had also been imposed. All those regulatory and supervisory measures had been taken in the interests of the population.

18. With regard to question (c), he himself had chaired a working group set up to draft a new criminal code. The problem to which the death penalty gave rise at present related to the Union's competence, since the Soviet Union had drawn up a list of 17 capital crimes and the Ukrainian Republic could only limit the number of such crimes. Under the draft new criminal code, the death penalty would therefore be retained only for aggravated homicide, crimes against the State, spying, terrorism and acts of violence against minors. He himself was opposed to the death penalty and studies had shown, moreover, that, since the Republic had stopped carrying out sentences of death, crime had not increased. That meant that the threat of the death penalty did not deter those who committed crimes, which were most often crimes of passion. However, it seemed that, if the abolition of the death penalty was submitted to a referendum, 80 per cent of the population would be in favour of maintaining it.

19. Referring to question (d), he said he thought that article 108 (2) of the Criminal Code had hardly ever been applied, since very few persons were infected with the AIDS virus and there was not yet enough information available to decide whether an infected person had deliberately infected another person. On the other hand, only six months after its entry into force, article 123 (1) had already been applied in 16 cases, mainly for banditry and serious crimes such as hostage-taking. It therefore seemed that the article was being applied effectively.

20. Mr. KOUTCHINSKI (Ukrainian Soviet Socialist Republic), referring to question (b), said that the Ukrainian SSR, the Byelorussian SSR and the USSR had sponsored a resolution on the question and had taken the initiative in an international co-operation plan to deal with the negative effects of the Chernobyl accident on the environment, both at the spring session of the Economic and Social Council and at the current session of the General Assembly. The draft resolution submitted to the spring session of the Economic and Social Council had been adopted by consensus.

21. The abolition of the death penalty was under consideration. The Government was taking a close interest in the matter, as shown by the active participation of the Ukrainian SSR in relevant activities at the international level. The Ukrainian SSR was also studying the possibility of acceding to the Second Optional Protocol aiming at the abolition of the death penalty.

22. Mrs. HIGGINS said that, although she was grateful to Mr. Bourtchak for the frankness with which he had stated that statistics on the death penalty had not been published, she was concerned by that non-publication. She was aware of the problems the authorities faced during the current transition period, but such censorship was none the less hard to justify. She knew that, for a long time, there had been a Pardons Committee which considered about 30 cases a month, with the result that pardons were granted in 3 to 5 per cent of cases. In other words, about 360 cases were considered every year and 18 sentences were commuted. Those figures remained a cause for concern, even if the death penalty was imposed only for the most serious crimes against persons. She hoped that the delegation of the Ukrainian SSR would ensure that the authorities understood the Committee's concern and persuade them that the first step to take was to publish statistics on the death penalty.

23. She also asked whether it was true that, although the right to appeal against a death sentence existed in fact, that right was not provided for in legislation and, if so, she wanted to know the reasons for the delay in bringing the legislation up to date.

24. Lastly, she noted that, according to paragraph 31, the new draft Fundamental Principles of Criminal Legislation, which had been published about four years previously, but had not yet been implemented, stated that the death penalty could not be imposed on men over the age of 60. However, her information was that there had not yet been any enactment permitting the reprieve of persons condemned under the legislation still in force, whereas, under the new legislation, such persons would not be liable to the death penalty. Even though that legislation had not yet officially entered into force, the persons to whom it would normally apply in due course should benefit from it now.

25. Mr. FODOR welcomed the fact that the number of crimes carrying the death penalty had fallen from 17 to 6. The new draft Fundamental Principles of Criminal Legislation, mentioned in paragraph 31 of the report, provided that the death penalty would not be applied either to women or to men over the age of 60. He wondered, however, whether that provision did not constitute discrimination. The Committee acknowledge that distinctions could be made in some cases where there were objective reasons for doing so, but, in the case in question, the distinction was neither logical or justified. If a man and a woman jointly committed a crime carrying the death penalty, it was hard to understand why they should not receive the same sentence. The same would be true of two men, one aged 59 and the other 60, who committed such a crime together, but were not both sentenced to death.

26. The CHAIRMAN, speaking as a member of the Committee and referring to the question of the confidential nature of statistical data on the death penalty raised by Mrs. Higgins, said that, as a rule, the death sentence was imposed by the courts and that, under article 14, paragraph 1, "any judgement rendered in a criminal case or in a suit at law shall be made public". Such data should therefore not be kept secret and it was surprising that the total number of cases of capital punishment should be unknown.

27. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the publication of sentencing statistics was not a new problem. Four bills had been drafted since 1986, but none had yet become law. The publication of any statistics at all had begun only in 1989; before that time, not even general statistics had been published. Until 1926, all statistics had been published, but when, from the 1930s on, the repression had increased, such publication had ceased and no figures had been available on the penalities which had been imposed on millions of persons and so horified the modern world. Measures had been taken to remedy the situation since 1989, but the problem would be fully dealt with only when a political decision had been taken in Parliament (the Supreme Soviet). He himself was in favour of the publication of such data and believed that the secrecy surrounding such information would very shortly be lifted. He shared the concern expressed by Mrs. Higgins, but was unfortunately unable to say more.

28. As far as carrying out the death sentence was concerned, he believed that Mrs. Higgins' information was not altogether accurate. In fact, sentences were reviewed by the Court of Appeal at the request of accused persons, while, in exceptional circumstances, the Supreme Soviet dealt with such issues. It was, moreover, possible in all cases to apply for a pardon. There were also special committees which reviewed and then ruled on cases where the accused had been sentenced to death, even if there had been no application for pardon.

29. Turning to the new Principles of Criminal Legislation, he said that, under current legislation a woman sentenced to death could not be executed if she had been pregnant at the time when the sentence had been handed down or if she had become pregnant subsequently. In the interests of making the punishment system more humane, a limit had been placed on the number of custodial sentences, which were increasingly being replaced by alternative penalties or fines. Morever, it was no longer only pregnant women who could not be executed, but all women, as well as men over the age of 60. He shared Mr. Fodor's opinion that such a system was not logical, but the criterion being applied was a humanitarian one.

30. Mrs. HIGGINS said that, although she was aware that persons sentenced to death could in fact take their cases to the Court of Appeal or other bodies, she still wished to know whether it was true that the law was silent on that appeal procedure. She also asked again why the provisions of the new draft Principles of Criminal Legislation had not yet been applied and the old legislation was still in force, although, in many fields, new laws were being applied even if they had not yet entered into force.

31. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) replying to Mrs. Higgins, said that appeals were provided for in the legislation and applied to all forms of punishment, including capital punishment; the relevant procedures were laid down in the Code of Criminal Procedure.

32. With regard to the application of legislation, it should be pointed out that draft laws reflected the views of the group of persons who had drawn them up and that they could subsequently be amended during consideration by Parliament. If Parliament adopted a law, but decided to implement it only at the end of a certain period, it would be unreasonable not to abide by its spirit during that period. However, that did not apply to mere draft bills which had not yet been approved by Parliament.

33. The CHAIRMAN invited the delegation of the Ukrainian SSR to reply to the questions contained in section V of the list, which read:

"V. Liberty and security of the person and treatment of prisoners and other detainees (articles 7, 9 and 10)

(a) With reference to paragraph 55 of the report, please provide further information on the conditions and maximum duration of solitary confinement.

(b) Please describe the main differences in the régimes of prisons and of corrective labour institutions or educational labour colonies. Are the United Nations Standard Minimum Rules for the Treatment of Prisoners complied with in all such places of detention?

(c) Please clarify whether any mechanism exists to prevent abuse of the judicial powers of the procurator and what recourse is available to persons who have been victims of such abuses. (See paragraph 45 of the report.)

(d) What is the maximum legal period of detention without trial? Is there any provision for a regular review by a court of such detention?"

34. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), replying to question (a), said that prisons and corrective labour institutions had an ordinary régime and a strict régime, but all prisoners served their sentences in the same establishments. Prisoners subject to a special disciplinary measure were placed in a cell on their own, but the use of solitary confinement was strictly regulated by law. The Ukrainian Criminal Code contained an article on solitary confinement which had been amended in 1988. Under the article, a prisoner serving his sentence in a corrective labour institution or camp could be placed in solitary confinement for six months. In labour camps, prisoners slept in dormitories and worked in the common work area, whereas, under solitary confinement, they were kept in isolation, although they were still subject to the ordinary régime as far as work was concerned. However, a prisoner committed to an establishment with a special régime could be kept in solitary confinement for a year. Decisions on such matters were taken by the prison administration in agreement with the procurator.

35. Turning to question (b), he described the differences between the three types of penal establishment. In prisons, the prisoners were kept in their cells and were let out only for an hour's exercise every day under the ordinary régime and for half an hour under strict régime. The latter régime was applicable in accordance with a court order, either during the first three years of imprisonment or, in the case of dangerous recidivists, for the entire length of the sentence.

36. Prison camps had two main areas, the living quarters, which contained the dormitories where the prisoners lived, and the work area. They could move about freely in the living quarters. Prisoners whose death sentence had been commuted to life imprisonment were subject to a strict detention régime and kept in cells either alone or with others. They joined in work with the other prisoners, but were later returned to their cells.

37. The educational labour colonies were an altogether different kind of institution. They were intended primarily for minors, who could stay there until the age of 20 in order not to be in contact with the adult prison population. Educational labour colonies were virtually closed institutions where education was compulsory and the Standard Minimum Rules for the Treatment of Prisoners were complied with.

38. The Standard Minimum Rules were complied with generally and there were inspectors responsible for ensuring that they were, but it could not be confidently stated that they were observed everywhere, because compliance depended very much on those who had to apply the Rules and many persons working in penal establishments did not know them. The Ministry of the Interior was trying to improve the situation in that regard. Penal establishments in the Ukraine had recently even been opened to foreigners who wished to visit them.

39. In reply to question (c), he said that procurators did not have judicial powers. Their duties with regard to pre-trial detention were the same as those of examining magistrates in Western countries. The fact that it was the procurator who ordered pre-trial detention did not necessarily involve violations of the Covenant. The procurator could obviously make a mistake, but so could an examining magistrate. In order to avoid situations which had been too frequent in the past, and where persons had been detained for several months before trial, the Supreme Soviet had decided in 1989 to set the maximum period of pre-trial detention ordered by a procurator at 18 months. At the end of that period, the detainee had to be released immediately.

40. He agreed with the members of the Committee that procurators should be supervised by the courts in those duties. As part of the current judicial reforms, the authorities were drawing up a new code of criminal procedure and the comments by the members of the Committee would be drawn to the attention of those drafting the code.

41. Lastly, in response to question (d), he again pointed out that the maximum legal period of detention without trial was 18 months.

42. Mr. ANDO, referring to the relationship between the procurator and the courts, particularly in cases of pre-trial detention, asked whether the fact that it was the procurator who decided on the lawfulness of detention was consistent with article 9, paragraph 4, of the Covenant, which stated that anyone who was deprived of his liberty was entitled to take proceedings before a court in order that that court might decide on the lawfulness of his detention.

43. The provision mentioned in paragraph 50 of the report, according to which "damage caused to a citizen as a result of unlawful conviction, unlawful indictment in criminal proceedings or unlawful arrest or detention in custody must be fully compensated by the State", seemed to embody the rule of strict liability, which, regardless of intention or error, entailed automatic reparation. It was open to question whether that was actually the aim of the provision.

44. He wished to know whether it was true, as he had been informed, that, under the legislation of the Ukrainian SSR, a conscientious objector could be called up for military service after he had already performed his alternative national service.

45. During the consideration of the second periodic report of the USSR, the representative of that country had acknowledged that abuses had been committed in placing individuals in psychiatric institutions, adding that steps had been taken to ensure that such cases did not occur again. He would like to know what the situation in the Ukrainian SSR was.

46. Mr. EL SHAFEI said that, according to paragraph 54 of the report, there was a trend towards a reduction in the percentage of convicted persons sentenced to deprivation of liberty owing to "the use of other forms of punishment" and a number of statutory orders had recently been issued establishing certain privileges and removing certain restrictions on the conditions in which sentences were served. He could not see how lifting some restrictions could mean that fewer persons would receive custodial sentences and asked for clarifications in that regard.

47. As to the prohibition on forced labour under article 8 of the Covenant, it would be useful to know whether, as part of overall legislative reforms, it was intended also to review the forced and compulsory labour system in the Ukrainian SSR.

48. Mr. WENNERGREN said that he too was concerned about compulsory labour in the Ukrainian SSR and asked whether it was used for social reintegration purposes, which would be quite legitimate, or whehter it was a punishment. In the latter case, such labour would be contrary to article 8 of the Covenant.

49. He believed that conscientious objection to military service did not exist in the Ukrainian SSR and wondered whether there was any intention to allow it in the near future.

50. Mrs. HIGGINS said that she would like further details on the administrative procedures governing confinement to psychiatric hospitals, which, as everyone knew, had until recently been a major problem. She gathered that it was still possible for a person to be compelled by the organs of inquiry to undergo psychiatric treatment without any authority being informed. That could not but be a cause for concern.

51. She had taken note with interest of the provisions of the Code of Criminal Procedure under which it was a punishable offence to obtain confessions by force. However, although the appeal courts were obliged to invalidate any sentence based on a forced confession, the courts of first instance were apparently not required to reject such confessions. She invited the delegation of the Ukrainian SSR to explain whether the legislation was deficient in that regard and whether there was any intention of remedying it.

52. It would also be useful to know whether, apart from opening up penal establishments to visitors from outside, there was any likelihood of measures to make those responsible for ill-treating prisoners liable to criminal prosecution or disciplinary sanctions.

53. The opportunity of communicating with counsel as from the time of arrest did not yet seem to be available in the Ukrainian SSR and the draft legislation on the matter was not yet in force. She wanted to know whether a date had been set and whether the authorities were afraid that practical

problems might arise, perhaps because of the shortage of lawyers or for lack of knowledge on the part of those concerned. She asked whether measures had been taken to inform persons under arrest that they had the right to communicate with counsel.

54. The period of administrative detention, which could be imposed by a judge sitting alone and could not be appealed, seemed excessive, since it preceded trial. The question was of prime importance because it was very often during administrative detention that cases of ill-treatment occurred. The problem was particularly acute in cases of detention incommunicado and she asked whether the legislation of the Ukrainian SSR contained a specific provision comparable to article 9, paragraph 3, of the Covenant, under which anyone arrested should be brought promptly before a judge or else released.

55. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the legislation of the Ukrainian SSR did not contain any provision similar to that of article 9, paragraph 3, of the Covenant. Decisions on detention were within the procurator's competence and that was indeed inconsistent with the Covenant. Abuses committed by an organ of inquiry were, however, quite obviously punishable and the responsibility of the State was engaged if the organ as such was found to be responsible, while, if the abuse was the act of a particular person, he was held responsible.

56. It could not be denied that, in the past, there had been abuses in connection with confinement in psychiatric hospitals. In 1989, the authorities had adopted provisions relating explicitly to psychiatric help and setting out guarantees for those confined. The provisions expressly stated that individuals who were not mentally ill should not be confined in psychiatric hospitals. The intention was to prevent confinement on political grounds.

57. As far as the reduction in the number of convicted persons sentenced to deprivation of liberty was concerned, paragraph 54 of the report was very explicit. The Ukrainian SSR had taken pains to find alternatives to custodial sentences and, for that reason, the number of persons sentenced to deprivation of liberty had gone down very substantially. Alternative forms of punishment set out in the new article 168 of the Criminal Code included fines and extra work at the convicted person's usual place of work.

58. Compulsory labour was obviously imposed as a replacement for a custodial sentence and was therefore in no way inconsistent with the Covenant. The person concerned learned a trade, worked eight hours a day and received remuneration, all of which could only be a help to his social reintegration.

59. The question of conscientious objection to military service had arisen when the law on religious association was being drafted. No provision on conscientious objection had been included in the law because the law on military service contained such a rule. The matter would be dealt with definitively when the law establishing the period of military service was adopted.

60. The Code of Criminal Procedure of the Ukrainian SSR provided that confessions obtained by physical or psychological coercion must not be accepted by the court of first instance. However, in practice, it had

happened that judges had not taken that into account and had convicted the accused person. The courts were obliged to check the evidence and confessions were not considered an adequate basis for conviction. The current depoliticization of the judicial system and the strengthening of the independence of judges should improve the situation. The Procurator's Office and the Ministry of the Interior instituted proceedings against officials who had exerted pressure to obtain confessions and disciplinary sanctions were not uncommon.

61. With regard to the possibility of the assistance of counsel after arrest or at the beginning of detention, the effect of the intended amendments to current legislation would be to bring the procedure in the Ukrainian SSR into line with that of Western countries. It was true that there were many problems, mainly as a result of the shortage of lawyers. To remedy that shortcoming, "law co-operatives" had been set up which could provide some help, but were not permitted to represent the accused before the courts. Consideration was being given to ways of providing genuine legal assistance and the new code of criminal procedure would contain provisions to that effect.

62. The law allowed for 15 days' administrative detention, not 30, in the case of minor offences, such as vagrancy, offences on the public highway or petty speculation. There were plans to establish a lower category of judges with the express function of hearing cases of that kind. An additional advantage of such a system would be to provide training for judges. The authorities had also undertaken to classify crimes and offences and the classification scale adopted would probably be close to that existing in Western countries.

63. Mr. Dimitrijevic took the Chair.

64. The CHAIRMAN invited the delegation of the Ukrainian SSR to reply to each of the eight questions contained in section VI of the list of issues relating to the right to a fair trial (article 14).

> "VI (a) What are the grounds for dismissing a judge and what are the procedures for recalling or dismissing a judge before the expiry of his term? (See paragraph 72 of the report.)"

65. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the judicial reform which had been undertaken included a study of the term of office of judges. It had been proposed to appoint them for life, and that would certainly be ideal. However, it had been decided to appoint them for 10 years. To strengthen their independence, it was intended that they should be appointed by the Supreme Soviet. Since the issue was under consideration throughout the Soviet Union, it was difficult to choose a common approach. People's court judges were appointed by local soviets and district court judges by the Supreme Soviet. Judges could not be dismissed unless they had committed a serious offence, such dismissal being decided by the Supreme Soviet. Under a new regulation, judges were appointed on the recommendation of a qualified panel of judges; they were thus appointed by their peers.

> "VI (b) What guarantees are there for ensuring that the terms and conditions of service and other emoluments and privileges of judges are not altered to their detriment during their terms of service?"

66. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) replied that, unfortunately, judges had been badly paid for a very long time and that their emoluments were still quite low. They were classified according to a strict hierarchy and also received bonuses. The question needed to be considered, since the independence of judges depended on their having good conditions of employment.

"VI (c) Are any changes envisaged in the organization of advocates and lawyers?"

67. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that, so far, bar associations existed only at the regional level, for specific districts. There were plans to set up a bar council and other professional organizations which would defend the interests of all officials and court officers.

"VI (d) Is membership of a political party a necessary condition for being elected or appointed as a judge?"

68. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that membership of a political party had never been a necessary condition for being a judge, although, in fact, most judges belonged to the political party in power. The Supreme Soviet of the Ukrainian SSR had decided to depoliticize the judiciary, believing that the functions of a judge were not compatible with an important role in a political party.

"VI (e) What is the scope of the rules of socialist law mentioned in paragraph 74 of the report?"

69. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the term used in the legislation was "constitutional law". "Socialist law" meant that any act by organs constituting the Supreme Soviet must be in conformity with the law. In fact, the word "socialist" added nothing to the obligation of compliance with the law.

"VI (f) Bearing in mind article 14 of the Covenant and the Committee's general comment No. 13 (21), under what circumstances can a trial be held in secret?"

70. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that current legislation was fully consistent with the provisions of the Covenant. At present, a trial could be held in secret in two cases: if a State secret had to be protected or if it involved details of the accused's private life or information involving minors. In all cases, the verdict was handed down in public.

"VI (g) Is it envisaged, pursuant to Section 3 of the Declaration of State Sovereignty of the Ukraine, which proclaims that State power is to be divided into legislative, executive and judicial branches, to separate the judicial from the executive powers of the procurator's office?"

71. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the question seemed to be irrelevant because the Procurator's Office was not an organ of executive power. It was an agency responsible for applying the law. It was true that, until recently, it had exerted some pressure on judges, whereas that was probably not the role it ought to have played.

"VI (h) With reference to paragraph 76 of the report, please clarify whether any organs other than the courts are authorized to impose administrative detention."

72. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that the courts could impose administrative detention only when questions relating to administrative offences were brought before them directly. In all other cases, detention was imposed by other organs.

73. Mr. MYULLERSON noted that the lack of independence of the judiciary, both in the Soviet Union and in the Ukrainian SSR, had long been evident from the fact that the Procurator's Office exercised direct control over the way the courts applied the law. The issue was currently being widely discussed in the USSR and he would like to know whether the situation was still the same in the Ukrainian SSR. If so, the judiciary could still not be said to be independent.

74. Mr. ANDO said that he wished to know what qualifications were necessary for appointment as a judge.

75. He also drew attention to paragraph 15 of the report, which stated: "It is in particular the exclusive prerogative of the Supreme Soviet of the Ukrainian SSR to deal with such matters as bringing before the Congress of People's Deputies of the USSR or the Supreme Soviet of the USSR the question of repealing laws adopted by those bodies or acts of the Supreme Soviet and its chambers if they fall outside the jurisdiction of the USSR and infringe the Republics' sovereign rights, and to suspend the validity of enactments of the USSR Council of Ministers and of ministries and departments of the USSR in the territory of the Ukrainian SSR if these are not in conformity with the Constitution and laws of the Ukrainian SSR". His understanding was that the executive power retained the right to rule on the constitutionality of a given law. He asked what, in that case, the role of the Supreme Court was and whether a constitutional court could challenge a decision by the Supreme Soviet.

76. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), referring to Mr. Myullerson's question on the connection between the Procurator's Office and the courts, said that, in criminal proceedings, the Procurator's Office conducted the prosecution on behalf of the State. In civil cases, it acted as the State's representative, with the right to institute proceedings, and, in that sense, it was a party to the case. However, the defence and the Procurator's Office had to be on an equal footing. The Procurator's Office also had the right to monitor the application of the law, including the right to appeal against a court decision. The Supreme Court could, however, override an appeal petition or a protest from the Procurator's Office, as indeed had happened on many occasions.

77. The reform of the judiciary that was now starting was intended to strengthen the independence of the judiciary to make it a genuine instrument for the defence of the law and citizens' interests.

78. In reply to Mr. Ando's question on judges' qualifications, he said that a future judge had to have very thorough legal training, be aged at least 25 - although, in his own opinion, the age limit was too low, since the post often required substantial experience of life - and have practised as a lawyer. If those three conditions were met, an inspection committee issued a recommendation concerning the candidate in question.

79. In rely to Mr. Ando's question on the competence of the Supreme Soviet and the Supreme Court, respectively, in ensuring the constitutionality of a given law, he said that the Supreme Soviet was not an organ of the executive power, but, in fact, the Parliament of the Ukrainian SSR and, as such, it had the power to legislate. On the other hand, the Supreme Court's status as a judicial body unfortunately did not give it the right to rule on the constitutionality of given legislation, unlike similar bodies in other countries. However, it had been decided to set up a supervisory committee, covering the entire USSR and responsible for ensuring the constitutionality of legislation. In the Ukrainian SSR, the most recent constitutional amendments provided for the establishment of a constitutional court with responsibility for the application of the law and for guaranteeing the constitutionality of the texts adopted.

80. Mr. Lallah resumed the Chair.

81. The CHAIRMAN invited the delegation to reply to the questions contained in section VII of the list, which read:

"VII. Freedom of movement and expulsion of aliens (articles 12 and 13)

(a) Is any consideration being given, in the context of the current reform movement in the field of civil and political rights, to the situation of the Crimean Tatars who have not yet been able to return to their earlier homes in the Ukraine?

(b) What are the prospects of early enactment by the Supreme Soviet of the USSR of the new draft law on entry into and departure from the USSR?

(c) Has the decree of the Presidium of the Supreme Soviet of the USSR on 'Measures for preventing infection with the AIDS virus', adopted on 25 August 1987, been applied in practice? Please clarify the circumstances under which aliens are required to undergo medical examinations."

82. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), replying to question (a), said that the problem was very complex. It was a fact that a historic injustice had been done to the Crimean Tatars, who had been moved against their will from their ancestral lands. According to the information the Ukrainian authorities had for the years 1942 and 1943, nearly 200,000 Crimean Tatars had been deported during those two years, and, according to militants of the Crimean Tatar movement, 400,000 were living in Uzbekistan and other regions of the USSR. They now had to be returned to their place of origin, but that gave rise to very difficult problems with regard to housing, jobs, etc., especially as the Crimean population had obviously increased in the past 50 years. After the submission of the second periodic report, the Ukrainian delegation had made a proposal aimed at settling the issue by creating jobs and putting up housing for the Crimean Tatars, but the matter had gone no further. Meanwhile, many Tatars had returned to Crimea of their own accord and had reclaimed their lands, sometimes creating conflict with the current occupants of the houses and land which had used to be theirs, but the current democratization process prevented the authorities from applying the

methods that had previously been used. The Ukrainian authorities, together with the USSR Government, were considering the problem with a view to organizing a mass repatriation of the Crimean Tatars. It should be noted that it was the responsibility of the USSR Government, not of the Ukrainian authorities, to settle the issue.

83. With regard to the new draft law on entry into and departure from the USSR, the question was the responsibility not of the Ukrainian SSR, but of the USSR. The current session of the Supreme Soviet of the USSR had before it a bill whose adoption would depend on the members' workload. However, the problem was so acute that it was most desirable for it to be settled as soon as possible.

84. Mr. KOUTCHINSKI (Ukrainian Soviet Socialist Republic), replying to question (c), said that a person knowingly suffering from AIDS was liable to criminal prosecution if he passed on the disease. In the USSR, 90 per cent of AIDS carriers were foreign nationals. The decree in question provided that they could be asked to undergo a medical examination, but that by no means routinely happened. The general aim of the measures adopted was to bring the disease under control and to stop it spreading in the Ukrainian SSR.

85. Mr. EL SHAFEI, referring to Mr. Bourtchak's reply to question (b), asked whether the documents issued to a Soviet citizen wishing to leave the country were valid for one destination only and whether they permitted his return to the USSR and to the Ukrainian SSR.

86. Mr. MYULLERSON said he understood that the citizens of the Ukrainian SSR fully enjoyed the right to freedom of movement and freedom to choose their residence, as provided for in article 12 of the Covenant. However, with regard to the right to leave the country, he asked whether the Ukrainian SSR intended to adopt a law on the matter before the new USSR act had entered into force or whether it planned to adopt a posteriori an act that would be in keeping with the Soviet Union's.

87. He asked what the necessary procedure was in practice for a national of the Ukrainian SSR who wished to leave the country. He was particularly interested to know about the situation in that regard because there had already been many practical improvements as far as regulations were concerned.

88. Mr. WENNERGREN said he was not sure that he had fully understood what would happen if a person with AIDS wished to enter the Ukrainian SSR. Would he be considered a criminal if he declared to customs or the police that he was HIV positive, for example, and would he be allowed to enter the country? If not, would that not constitute discrimination, since a person who was HIV positive, but took the necessary precautions, would as a rule not pass on his disease?

89. Mrs. HIGGINS, referring to the questions raised under paragraph (b), said that she would like to make some comments which the delegation could draw to the attention of the Soviet authorities on its return, since the draft law was still under discussion. Although the current revised draft was considerably better than the previous version, it still gave rise to a problem with regard to the wording of the provisions relating to State security, since they tended

to maintain the principle that access to State or public sector information could be grounds for refusing a passport. She was also very concerned at the fact that the Soviet definition of State security did not coincide at all with the meaning of the term "national security" used in article 12, paragraph 3, of the Covenant, which referred to a far more immediate threat to a country's security.

90. Lastly, she very much hoped that the Soviet authorities would take the opportunity to specify in the legislation that the new provisions would also be applicable to persons who had previously submitted applications and had been turned down.

91. Mr. ANDO noted in paragraph 66 of the report that the Act on the legal status of aliens in the USSR, of 24 June 1981, specified the circumstances in which aliens might be expelled or deported from the USSR and that, if an alien had grossly violated legislation concerning the legal status of aliens in the USSR, he could be expelled. He asked whether the Act gave precise definitions of such gross violations and, if not, what rulings the Soviet courts had handed down in that regard.

The meeting rose at 6 p.m.